

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CIARA WILLIAMS, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

DIANE WILLIAMS,

Respondent-Appellant,

and

MICHAEL SMITH,

Respondent.

UNPUBLISHED

October 2, 2003

No. 244039

Wayne Circuit Court

Family Division

LC No. 99-385151

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), (i), (j) and (l). We affirm.

The trial court did not clearly err by finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I);¹ *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The primary conditions of adjudication were that respondent was without housing and unable to provide the minor child with care, custody and support. The evidence at trial clearly showed that respondent remained unable to provide proper care for the minor child. Respondent required constant assistance at visits with feeding, changing and cleaning the minor child. Although she completed parenting classes, she did not apply the techniques that were taught and she declined to take further classes that were recommended. Respondent is unable to care for herself and lives with a legal guardian. Respondent's housing is

¹ Effective May 1, 2003, the court rules governing proceedings regarding juveniles were amended and moved to the new MCR subchapter 3.900. The provisions on termination of parental rights are now found in MCR 3.977. The court rule provision setting forth the "clearly erroneous" standard of review is now found in MCR 3.977(J).

unverified as she reported during the termination trial that she and her guardian were in the process of moving. The evidence indicated no likelihood that these conditions, especially respondent's inability to care for the minor child, would be rectified within a reasonable time considering the child's age. We are not convinced that the trial court clearly erred by terminating respondent's parental rights under MCL 712A.19b(3)(c)(i).

Termination was also proper under MCL 712A.19b(3)(g) and (j). Respondent clearly failed to provide proper care and custody of the minor child when she abandoned her in the hospital for three days shortly after her birth. Further, the evidence cited above indicates that respondent would not be able to provide proper care in the reasonable future considering the age of the minor child. Likewise, where the evidence indicated that respondent has always been in the care of a guardian and cannot care for herself, the trial court did not clearly err by finding a reasonable likelihood that the child would be harmed if returned to respondent. Therefore, termination was also proper under MCL 712A.19b(3)(g) and (j).

Respondent contends on appeal that petitioner failed to make reasonable efforts to reunite her with her child as required by MCL 712A.18f. We disagree. Petitioner obtained an IQ test for respondent so that she could receive parenting classes tailored to her level of functioning. It was respondent who declined to pursue recommended additional classes. Petitioner also attempted to find a program that could provide ongoing assistance to respondent in the care of the minor child, but based on respondent's functioning level, there was no suitable program. In similar circumstances, this Court held that petitioner is not required to provide a parent with full time, live in assistance with her child. *In re Terry*, 240 Mich App 14, 27-28; 610 NW2d 563 (2000). The evidence in this case indicates, unfortunately, that respondent simply lacks the ability to properly care for the minor child.

Respondent's parental rights were also terminated under MCL 712A.19b(3)(c)(i) and (l). Respondent contends that the prior termination of parental rights to her older child should not be relied upon because it was obtained without due process and equal protection for respondent. This issue is waived because it was not raised in the trial court. *Booth v University of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993); *In re Jones*, 137 Mich App 152, 155; 357 NW2d 840 (1984). More important, respondent's due process and equal protection challenge to the prior termination order is an impermissible collateral attack on that judgment. See *In re Hatcher*, 443 Mich 426, 438-439; 505 NW2d 834 (1993). In any event, we need not rely on the prior termination order in affirming the trial court's decision in this matter, because termination need be based on only one statutory ground. *In re SD*, 236 Mich App 240, 247; 599 NW2d 772 (1999).

Finally, we find that the trial court did not err by holding that termination was not clearly contrary to the best interests of the child. MCL 712A.19b(5). The minor child entered foster care days after her birth and has never lived with respondent. She is now two years old and in need of permanency.

Affirmed.

/s/ Michael R. Smolenski
/s/ William B. Murphy
/s/ Kurtis T. Wilder